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Hung Moy (P) v Ang Cha Hooi

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02 (IM)-1081–06 OF 2019
SURAYA OTHMAN, HADHARIAH SYED ISMAIL AND MOHD SOFIAN JJCA
28 MAY 2021

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Family Law — Divorce — Decree nisi granted and made absolute — High Court allowed application by respondent to set aside decree nisi and certificate making decree nisi absolute — Appeal against decision — Whether service on respondent was proper — Whether there was delay by respondent — Whether decree nisi could be set aside — Law Reform (Marriage and Divorce) Act 1976 s 61

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This was an appeal by the appellant against the decision of the High Court in allowing the respondent's notice of application to set aside the decree nisi and certificate making decree nisi absolute. The appellant and the respondent were married on 23 December 1977. Out of the marriage, they had two children. The appellant and the respondent had lived together until 3 June 2008 when the respondent left the house after a quarrel with the appellant. On 2 July 2009, the appellant filed a contested petition for divorce in Kuala Lumpur High Court. The petition was served by way of substituted service as ordered by the court order. The petition was heard and the respondent did not attend nor defended the hearing. The High Court allowed the petitioner's petition and granted the decree nisi on 2 June 2010. The decree nisi was made absolute on 3 September 2010. On 8 December 2017, the respondent filed the application to set aside the decree nisi and the decree nisi absolute. The High Court allowed the application and hence this appeal.

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Held, allowing the appeal:

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(1) The respondent had failed to prove that the appellant knew his address in Pulau Pinang. The appellant had no choice but to serve the petition by substituted service. Given the circumstances of the case, the court order for substituted service was proper and valid. It must therefore followed that service of the petition and other cause papers on the respondent was proper (see paras 21 & 23).

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(2) The respondent who had constantly in contact with his son must had known about the divorce much earlier than the year 2015. But the respondent did nothing. From the date the decree nisi was granted on 2

June 2010 to the date of the application on 8 December 2017, there was an inordinate delay of more than seven years (see para 29).

(3) There were relevant factors that the High Court judge should had taken into account before setting aside the decree nisi and decree nisi absolute. For the appellant to start again the divorce proceedings for the second time was unduly harsh and unfair. The respondent had no good reasons to set aside the decree nisi and decree nisi absolute. The learned High Court judge had erred in setting aside the decree nisi and decree nisi absolute. The order was unfair to the respondent. In a situation like this, the respondent was not without a remedy. He was at liberty to apply to the court to vary the court order for custody or maintenance under s 96 of the Law Reform (Marriage and Divorce) Act 1976 (see paras 37–38).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu terhadap keputusan Mahkamah Tinggi yang membenarkan notis permohonan responden untuk mengetepikan decree nisi dan sijil yang membuat decree nisi mutlak. Perayu dan responden berkahwin pada 23 Disember 1977. Daripada perkahwinan itu, mereka mempunyai dua orang anak. Perayu dan responden telah tinggal bersama sehingga 3 Jun 2008 ketika responden meninggalkan rumah setelah bertengkar dengan perayu. Pada 2 Julai 2009, perayu memfailkan petisyen untuk perceraian di Mahkamah Tinggi Kuala Lumpur. Petisyen itu diserahkan melalui serahan ganti seperti yang diperintahkan oleh perintah mahkamah. Petisyen itu didengar dan responden tidak hadir atau membela pendengaran. Mahkamah Tinggi membenarkan petisyen pemohon dan memberikan decree nisi pada 2 Jun 2010. Decree nisi menjadi mutlak pada 3 September 2010. Pada 8 Disember 2017, responden memfailkan permohonan untuk mengetepikan decree nisi dan decree nisi mutlak. Mahkamah Tinggi membenarkan permohonan itu dan oleh itu rayuan ini.

Diputuskan, membenarkan rayuan:

(1) Responden gagal membuktikan bahawa perayu mengetahui alamatnya di Pulau Pinang. Perayu tidak mempunyai pilihan selain menyerahkan petisyen dengan serahan ganti. Melihat kepada keadaan kes, perintah mahkamah untuk serahan ganti adalah tepat dan sah. Oleh itu, ia mesti diikuti bahawa permohonan petisyen dan kertas kausa lain terhadap responden adalah betul (lihat perenggan 21 & 23).

(2) Responden yang selalu berhubung dengan anaknya pasti tahu mengenai perceraian itu lebih awal daripada tahun 2015. Tetapi responden tidak melakukan apa-apa. Dari tarikh keputusan dikeluarkan pada 2 Jun 2010 hingga tarikh permohonan pada 8 Disember 2017, terdapat kelewatan lebih dari tujuh tahun (lihat perenggan 29).

(3) Terdapat faktor-faktor yang relevan yang seharusnya diambil kira oleh

hakim Mahkamah Tinggi sebelum mengetepikan decree nisi dan decree nisi mutlak. Bagi perayu untuk memulakan semula proses perceraian untuk kali kedua adalah terlalu kejam dan tidak adil. Responden tidak mempunyai alasan yang baik untuk mengetepikan keputusan tertentu dan keputusan tertentu mutlak. Hakim Mahkamah Tinggi yang bijaksana telah terkhilaf dalam mengetepikan decree nisi dan decree nisi mutlak. Perintah tersebut adalah tidak adil bagi responden. Dalam keadaan seperti ini, responden bukan tanpa remedi. Dia bebas untuk memohon kepada mahkamah untuk mengubah perintah mahakamah untuk hak penjagaan atau nafkah di bawah s 96 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 (lihat perenggan 37–38).]

Cases referred to

Wong Cheng Ping v Chin Guan Seng @ Tan Guan Seng [2010] MLJU 226, HC (folld)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 7, 61, 96
Rules of Court 2012 O 13

Appeal from: Divorce Petition No S8–33–951 of 2009 (High Court, Kuala Lumpur)

N Subramaniyan (Lum Chee Seng with him) (Lum Chee Seng & Assoc) for the appellant.
Mary M Anthony (Zarina Begum with her) (MM Anthony) for the respondent.

Hadhariah Syed Ismail JCA:

INTRODUCTION

[1] The appeal by the appellant is against the decision of the High Court given on 17 April 2019, allowing the respondent's notice of application (encl 36) to set aside the decree nisi dated 2 June 2010 and certificate making decree nisi absolute dated 3 September 2010 with costs.

BACKGROUND FACTS

[2] The appellant, 69 years old now, is a retired teacher with a monthly pension of RM1,300. She now works as a private tuition teacher.

[3] The respondent, 71 years old now works as an estate agent and security official in Penang.

[4] The appellant and the respondent were married on 23 December 1977. Out of the marriage, they had two children:

(a) Ang Chuan Lek, a son aged 42 years old now; and

(b) Ang Shin Jee, a daughter aged 33 years old now.

[5] Ang Shin Jee was born with 'Down Syndrome' and is mentally disabled. She requires constant care and supervision. This fact is admitted by the respondent.

[6] The appellant and the respondent had lived together at No 9, Jalan Bukit Desa 2, Taman Bukit Desa, 58100 Kuala Lumpur until 3 June 2008 when the respondent left the house after a quarrel with the appellant.

[7] The couple jointly owned a matrimonial shop house known as No 42C, Jalan Desa Bakti, Taman Desa Town Centre, Kuala Lumpur with each party held equal share. The original land title of this shop house was in the possession and custody of the respondent.

[8] On 2 July 2009, the appellant filed a contested petition for divorce in Kuala Lumpur High Court.

[9] The petition was served by way of substituted service as ordered by the court order dated 15 September 2009.

[10] The petition was heard on 2 June 2010. The respondent did not attend nor defended the hearing.

[11] The High Court allowed the petitioner's petition and granted the decree nisi on 2 June 2010 with the following terms:

(a) Pemeliharaan, jagaan dan kawalan ke atas anak perempuan, Ang Shin Jee diberikan kepada pempetisyen sehingga anak perempuan tersebut tidak lagi berada dalam keadaan hilang upaya.

(b) Setengah bahagian hak responden atas apartmen bersama- sama setengah bahagian hak pempetisyen di atasnya yang dipegang di bawah Hakmilik Strata Geran 15135/M5/4/249, No.Petak 249 dalam Tingkat 4, Mukim Kuala Lumpur, Lot 51565, Daerah Wilayah Persekutuan dan beralamat No. 42C, Jalan Desa Bakti, Taman Desa Town Centre, Taman Desa, 58100 Kuala Lumpur dijual kepada pihak ketiga dengan terma-terma ditentukan oleh pempetisyen tanpa persetujuan responden diperlukan dan setengah bahagian hasil jualan kepunyaan responden sahaja digunakan untuk membiayai nafkah anak perempuan tersebut;

(c) Penolong Kanan Pendaftar Mahkamah diberi kuasa untuk menandatangani dan menyempurnakan perjanjian jual beli dan pindah milik dan segala suratcara yang lain berkenaan setengah bahagian hak responden dalam apartmen tersebut bagi pihak responden.

(d) Kereta nombor pendaftaran WHE 5671 atas nama responden dipindahmilik kepada pempetisyen.

(e) Responden tidak dibenarkan akses kepada anak perempuan tersebut.

[12] Decree nisi was made absolute on 3 September 2010.

[13] On 8 December 2017, the respondent filed the application to set aside the decree nisi and the decree nisi absolute.

[14] On 22 January 2019, the respondent married pastor Bennet Lopez. The marriage was registered on the same date.

THE RESPONDENT'S NOTICE OF APPLICATION

[15] In the notice of application (encl 36), the respondent prayed for the following orders:

(i) Bahawa responden suami iaitu Ang Cha Hooi diberikan kebenaran membuat permohonan ini untuk mengenepikan Perintah Penyampaian Ganti bertarikh 15.9.2009.

(ii) Selaras dengan perintah mengenepikan Perintah Penyampaian Ganti bertarikh 15.9.2009, untuk mengenepikan Decree Nisi bertarikh 2.6.2010.

(iii) Selaras dengan perintah mengenepikan Decree Nisi, Sijil Menjadikan Decree Nisi Mutlak bertarikh 3.9.2010 juga diketepikan.

(iv) Selaras dengan mengenepikan Perintah Decree Nisi dan Decree Nisi Mutlak, maka Perintah bertarikh 16.11.2015 bagi pengeluaran hakmilik baru bagi hartanah beralamat No. 42C, Jalan Desa Bakti, Taman Desa Town Centre, Kuala Lumpur diketepikan.

(v) Suatu perintah untuk mengenepikan perintah bertarikh 16.11.2015 yang diperolehi untuk membatalkan dan menjadikan 'null and void' geran hakmilik bagi hartanah beralamat No.42C, Jalan Desa Bakti, Taman Desa Town Centre, Kuala Lumpur yang berada dalam simpanan dan pegangan responden.

(vi) Satu perintah untuk pempetisyen mendedahkan sebarang atau lain-lain Perintah yang diperolehi berkaitan dengan hartanah beralamat No. 42C, Jalan Desa Bakti, Taman Desa Town Centre, Kuala Lumpur.

(vii) Satu perintah untuk pempetisyen mendedahkan status hakmilik geran bagi hartanah beralamat No. 42C, Jalan Desa Bakti, Taman Desa Town Centre, Kuala Lumpur.

(viii) Satu perintah untuk pempetisyen mengemukakan kepada mahkamah dan responden Suratan Hakmilik baru (sekiranya dikeluarkan) yang dikeluarkan oleh Pendaftar Hakmilik Tanah dan Galian Wilayah Persekutuan Kuala Lumpur terhadap hartanah yang beralamat No. 42C, Jalan Desa Bakti, Taman Desa Town Centre, Taman Desa, 58100 Kuala Lumpur;

(ix) Bahawa responden suami diberikan kebenaran membuat permohonan ini untuk memasukkan satu kaveat persendirian terhadap hartanah perkahwinan yang beralamat No. 42C, Jalan Desa Bakti, Taman Desa Town Centre, Taman Desa 58100 Kuala Lumpur sehingga isu hartanah perkahwinan di dalam petisyen perceraian di antara responden dan pempetisyen diputuskan dengan muktamad oleh mahkamah;

(x) Dan/atau secara alternatif status quo hartanah perkahwinan yang beralamat No. 42C, Jalan Desa Bakti, Taman Desa Town Centre, Taman Desa 58100 Kuala Lumpur dikekalkan sehingga petisyen perceraian di antara pempetisyen dan responden diputuskan dengan muktamad oleh mahkamah.

(xi) Pempetisyen dilarang dan/atau dihalang untuk mengadakan sebarang urusan terhadap hartanah yang beralamat No.42C, Jalan Desa Bakti, Taman Desa Town Centre, Kuala Lumpur termasuk sebarang penjualan, memohon untuk geran baru dan/atau penyewaan hartanah tersebut sehingga petisyen perceraian di antara pempetisyen dan responden diputuskan dengan muktamad oleh mahkamah.

(xii) Satu Perintah untuk pempetisyen mendedahkan status quo sebuah kereta kancil bernombor WHE 5671 yang dibelikan oleh responden untuk penggunaan pempetisyen yang mana kereta tersebut adalah harta perkahwinan.

(xiii) Satu perintah untuk mengekalkan status quo kereta kancil bernombor WHE 5671 tersebut sehingga petisyen perceraian di antara pempetisyen dan responden diputuskan dengan muktamad oleh mahkamah.

(xiv) Satu perintah untuk pempetisyen mendedahkan tempat tinggal Ang Shin Jee.

(xv) Satu perintah untuk membenarkan responden berjumpa dengan Ang Shin Jee serta merta tanpa kehadiran pempetisyen;

(xvi) Satu perintah untuk pempetisyen mendedahkan samaada Ang Shin Jee yang berada di bawah penjagaan, pemeliharaan dan kawalan pempetisyen telah dibenarkan akses kepada pastor Bennet, ahli-ahli keluarga pastor Bennet, ejen-ejen pastor Bennet dan pekerja-pekerja pastor Bennet.

(xvii) Kos permohonan ini ditanggung oleh pempetisyen; dan

(xviii) Lain-lain relif yang difikirkan sesuai dan wajar oleh mahkamah.

[16] On 17 April 2019, the High Court allowed prayer (ii) and (iii) in encl 36.

FINDINGS OF THE HIGH COURT

[17] (a) *pempetisyen telah menyempurnakan serahan petisyen perceraian sebagaimana perintah mahkamah*;

(b) *penjelasan responden mengenai kelewatan iaitu responden hanya mengambil tindakan setelah diserahkan semua dokumen berkaitan diterima oleh mahkamah*;

(c) *perceraian dibuat secara rahsi*a; and

(d) *responden mempunyai pembelaan bermerit.*

THE APPEAL

[18] In the amended memorandum of appeal, the appellant relied on 26 grounds to support her appeal. But, we summarised them into four broad grounds and they are:

(a) service of the divorce petition dated 2 July 2009 and notice of hearing dated 7 January 2010 on the respondent was proper;

(b) there was a delay of seven years on the part of the respondent;

(c) there is no provision in the Law Reform (Marriage and Divorce) Act 1976 which provided for rescission or setting aside of decree nisi; and

(d) the cancellation of the decree nisi had changed the status of the appellant who has since remarried to someone who committed bigamy.

Ground No (i)

[19] The facts revealed attempts were made by the process server to serve the divorce petition and other cause papers personally on the respondent at the last known address of the respondent at No 42C, Jalan Desa Bakti, Taman Desa, Kuala Lumpur, but was unsuccessful. The appellant then applied and obtained a court order dated 15 September 2009 to serve the divorce petition on the respondent by way of substituted service. The court order dated 15 September 2009 was duly complied with by the appellant by posting a copy of the divorce petition on the court notice board and at the last known address of the respondent at No 42C, Jalan Desa Bakti, Taman Desa, Kuala Lumpur and a notice of the petition was advertised in the English newspaper 'The Star'.

[20] The first prayer prayed for by the respondent in his application in encl 36 is for the setting aside of the order for substituted service dated 15 September 2009. It is the respondent's contention that at the material time,

the appellant knew the respondent was staying in Pulau Pinang as well as the respondent's address in Pulau Pinang; that it is illogical for him to stay at No 42C, Jalan Desa Bakti, Taman Desa Kuala Lumpur as the premises was used as a tuition centre by the appellant and the appellant had changed the keys to the said premises. In para 32 of his affidavit in support (*RR Jld* 1), the respondent averred:

> 32. Pada setiap masa material, pempetisyen mempunyai pengetahuan terperinci bahawa saya tinggal di Pulau Pinang dan alamat surat menyurat saya adalah No 100-2-3A, Jalan Bukit Kukus, Ayer Hitam, 11060 Ayer Hitam, Pulau Pinang iaitu alamat adik perempuan saya di Pulau Pinang.

[21] The respondent's averment is denied by the appellant. It falls on the respondent to prove the appellant knew his address in Pulau Pinang. This the respondent failed to do. The respondent did not produce any document or short message services (SMS) to the appellant containing his address in Pulau Pinang in court to support his contention. What was produced in court was sms for the year 2015/2016 by which time the divorce proceedings is already over and the sms also did not contain the respondent's address in Pulau Pinang. As such, the respondent has failed to prove that the appellant knew his address in Pulau Pinang. This being the case, the appellant had no choice but to serve the petition by substituted service.

[22] On the issue of service, the learned High Court judge found as a fact that the respondent confirmed that property No 42C is a matrimonial home purchased by him and he once lived there. At para [23] of her grounds of judgment, the learned High Court judge said:

> [23] Alamat No 42C, Jalan Desa Bakti, Taman Desa, 58100 Kuala Lumpur adalah alamat terakhir responden yang diketahui pempetisyen mengikut daftar alamat bertarikh 13 August 2009 dari Jabatan Pendaftaran Malaysia. Mahkamah ini mendapati pempetisyen telah menyempurnakan serahan petisyen perceraian sebagaimana perintah mahkamah.

[23] Given the circumstances of the case, we are of the considered view that the court order for substituted service is proper and valid. It must therefore follows that service of the petition and other cause papers on the respondent is proper.

Ground No (ii)

[24] It is not disputed that the respondent filed encl 36 after more than seven years from the date the decree nisi was made absolute on 3 September 2010. This application also came about after the appellant put up a signboard to sell the matrimonial property at No 42C, Jalan Desa Bakti, Taman Desa, Kuala Lumpur on 29 March 2017.

[25] The respondent admitted that he knew about the divorce from his son, Ang Chuan Lek sometimes at the end of year 2015 and not in 2017. This is evident in para 5 of his affidavit in reply (*RR Jld* 1) wherein he states as follows:

> 5. Pada persekitaran akhir tahun 2015, saya telah mendapat tahu daripada anak lelaki Ang Chuan Lek yang mana sesungguhnya percaya isteri saya telah menceraikan saya secara senyap dan secara berahsia.

[26] Despite knowing about the divorce in 2015, the respondent only filed the application two years later, in 2017 purportedly after he was served with all the relevant documents. His explanation was accepted by the learned High Court judge.

[27] Before us, learned counsel for the appellant argued Law Reform (Marriage and Divorce) Act 1976 is a specific law. It is submitted that the respondent cannot used the provisions of setting aside default judgment under O 13 of the Rules of Court 2012 to set aside the decree nisi. Having decided that service is proper, it is submitted that the learned High Court judge had erred in accepting the respondent's explanation.

[28] In response, learned counsel for the respondent submitted there is no delay because the respondent was never served with the decree nisi and the decree nisi absolute until today (as at the day this appeal was heard on 23 November 2020).

[29] After hearing the parties submission, we are not in agreement with the respondent. We agree with the appellant's submission that the respondent who had constantly in contact with his son must have known about the divorce much earlier than the year 2015. But the respondent did nothing. From the date the decree nisi was granted on 2 June 2010 to the date of the application on 8 December 2017, we agree there is an inordinate delay of more than seven years. It is trite law that the court will not lend assistance to a litigant who slept on his right.

Ground Nos (iii) and (iv)

[30] The relevant provisions of the law on setting aside the decree nisi is provided for in s 61 of the Law Reform (Marriage and Divorce) Act 1976 (the Act). It reads as follows:

> 61 Decree Nisi and proceedings thereafter
>
> (1) Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of three months from its grant unless the court by general or special order from time to time fixes a shorter period.

(2) Where a decree nisi of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court and on that application, the court may —

(a) notwithstanding the provisions of the last foregoing subsection, make the decree nisi absolute;

(b) rescind the decree nisi;

(c) require further inquiry; or

(d) otherwise deal with the case as it thinks fit.

[31] Learned counsel for the appellant submitted that the High Court judge had erred in setting aside the decree nisi dated 2 June 2010 and the decree nisi absolute dated 3 September 2010 when there is no statutory provisions which provides for the decree nisi to be set aside after it has been made absolute. As to the effect of s 61 of the Act, we were referred to the case of *Wong Cheng Ping v Chin Guan Seng @ Tan Guan Seng* [2010] MLJU 226, wherein Yeoh Wee Siam J (as she then was) held:

There is no provision in the Act for rescinding or setting aside a decree nisi that already has been made absolute. It appears to me that it is the intention of Parliament to preserve the integrity and finality of a decree nisi that already has been made absolute after three months.

As such, parties are not allowed to freely apply to the Court at any time to rescind or set it aside unless for very good reasons or in exceptional circumstances.

[32] We agree and adopt the above principles as the correct statement of the law.

[33] Learned counsel for the appellant submitted that by setting aside the decree nisi which was made absolute seven years ago, the High Court judge has: (i) made an order in defiance of the statute; and (ii) unduly altered the position of the appellant and compelled her to commit bigamy which is in contravention of s 7 of the Act.

[34] In response to the appellant's submission, learned counsel for the respondent submitted that the decree nisi was obtained in dishonest manner and in no circumstances should be allowed to stand. It is submitted that the appellant had abused the court's process and managed to steal and snatch everything from the respondent and prevented him from seeing his only daughter. It is further submitted that the appellant re-marry when the respondent's application had not been disposed yet.

[35] In her grounds of judgment, we noted that the sole reason why the learned High Court judge set aside the decree nisi is because she finds the respondent had defence on merits.

[36] In para 35 of the respondent's 'Cadangan Petisyen Balas', the respondent pleads as follows:

> 35. Petisyen ini difailkan oleh Pempetisyen untuk membubar perkahwinan di antara Pempetisyen dan Responden walaupun Pempetisyen adalah punca perkahwinan ini tidak dapat diperbaiki atau diselamatkan dan kelakuan Pempetisyen bersama teman lelakinya iaitu Bennet Lopez mengakibatkan perkahwinan ini tidak dapat dipulihkan.

[37] To us, para 35 above show the respondent agrees that the marriage has irretrievably broken down and could not be saved. That the respondent can see their marriage is over with the presence of a third party. That the time has come for the respondent to accept the fact that their marriage should be dissolved no matter what his terms are. The appellant has re-marry someone else. The parties have been living apart for more than ten years (from 2008 until now). The delay in approaching the court. On top of that both the appellant and the respondent is now in their ripe old age of 70 years old. How much longer can both of them lived. We were of the considered view that these are the relevant factors that the High Court judge should have taken into account before setting aside the decree nisi and decree nisi absolute. To us, for the appellant to start again the divorce proceedings for the second time is unduly harsh and unfair. Given the circumstances the appellant is in, we are of the view that the respondent had no good reasons to set aside the decree nisi and decree nisi absolute. On this ground alone, we took the view that the learned High Court judge had erred in setting aside the decree nisi and decree nisi absolute.

[38] The central issues in dispute between the parties are the custody, care and control of Ang Shin Jee; the joint equal ownership of property No 42C, Jalan Desa Bakti, Taman Desa, Kuala Lumpur and a Kancil car No WHE 5671. It is not disputed that via the court's order dated 2 June 2010, the appellant had taken away the respondent's car and part of the respondent's equal share to the matrimonial property and had denied the respondent access to his only daughter. It is obvious to us that the order is unfair to the respondent. In a situation like this, the respondent is not without a remedy. He is at liberty to apply to the court to vary the court order for custody or maintenance under s 96 of the Act which reads as follows:

> 96. Power for court to vary orders for custody or maintenance the court may at any time and from time to time vary, or may rescind, any order for the custody and maintenance of a child on the application of any interested person where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material changes in the circumstances.

OUR DECISION

[39] For the aforesaid reasons, we find there is merit in the appeal. We find the learned High Court judge had erred in setting aside the decree nisi and decree nisi absolute when there is inordinate delay and no good reasons to set aside the same. We therefore allow the appeal and set aside the High Court order dated 17 April 2019. The decree nisi dated 2 June 2010 and the decree nisi absolute dated 3 September 2010 is reinstated. We further ordered that the respondent is at liberty to apply to court under s 96 of the Act to vary the court order on custody and maintenance of the special need child, Ang Shin Jee.

Appeal allowed.

Reported by Ahmad Ismail Illman Mohd Razali